



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMC
Docket No: 04981-00
5 October 2000

SGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Sergeant [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 October 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 14 July 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

498100
IN REPLY REFER TO:
1610
MMER/PERB
14 JUL 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
SERGEANT [REDACTED] USMC

Ref: (a) Sergeant [REDACTED] DD Form 149 of 18 May 00
(b) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 12 July 2000 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 980620 to 980930 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that the Reviewing Officer's statement is inaccurate and that he never received any counseling entries in his Service Record Book (SRB). To support his appeal, the petitioner furnishes a copy of page 11 from his SRB.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Given the adverse nature of his comments, the Reviewing Officer ([REDACTED]) should have referred the report to the petitioner for signature in Item 24 and the opportunity to comment. His failure to do so was detected by this Headquarters and the petitioner was afforded his right to respond prior to the report being entered into his record. As evidenced by him attaching the original letter from this Headquarters (1610 MMSB-32 of 19 Apr 99) to reference (a), it is quite clear that the petitioner received the official correspondence but chose to not respond. Had he availed himself of that right, he could have surfaced his disagreements and had them resolved by the Third Sighting Officer. In this regard, the Board emphasizes that the appeal system is not a substitute for proper resolution of a fitness report by those in the reporting chain.

b. While the Page 11 from the petitioner's SRB shows no entries beyond 970509, that is not considered to be proof positive that subsequent pages (11a, 11b, etc.) do not exist and that the entries reported by [REDACTED] did not occur.

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4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Sergeant [REDACTED] official military record. As a matter of information, in our notification letter to the petitioner concerning the decision of the PERB, we offered him another opportunity to officially respond to the adverse nature of the Reviewing Officer's comments.

5. The case is forwarded for final action.

[REDACTED]
[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps